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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8
9 Shelly M Lachcik, et al.,
10 Plaintiffs,
11 v.
12 Maricopa County Board of Commissioners,
13 et al.,
14 Defendants.

No. CV-15-02318-PHX-DGC

ORDER

15 Plaintiffs have filed a pro se motion to amend their second amended complaint.
16 Doc. 39. The motion has been fully briefed (Docs. 43, 45), and Plaintiffs have filed a
17 supplement to their original motion (Doc. 44) and lodged the proposed amendment
18 (Doc. 40). No party requests oral argument. The Court will grant the motion.

19 **I. Background.**

20 Until last year, Plaintiff Shelly Lachcik and her mother, Plaintiff Katherine Fox,
21 lived together in federally-subsidized housing. On July 4, 2015, the Housing Authority
22 of Maricopa County (“HAMC”) terminated Lachcik’s housing assistance based on its
23 finding that she failed to report a change in her household income arising from Fox’s
24 self-employment. Doc. 40 at 35-37. Plaintiffs filed their original complaint on
25 November 16, 2015. Doc. 1.

26 On December 1, 2015, Plaintiffs filed an amended complaint, naming as
27 defendants the Maricopa County Board of Commissioners, HAMC, and HAMC’s
28 Executive Director, Gloria Munoz, in her official capacity. Doc. 10. The amended

1 complaint asserted claims under 42 U.S.C. § 1983 based on alleged violations of the Due
 2 Process Clause of the Fourteenth Amendment, section 8 of the Housing Act of 1937 (42
 3 U.S.C. § 1437f), the informal hearing provision of the section 8 regulations (24 C.F.R.
 4 § 982.555), and the Fair Housing Act (42 U.S.C. § 3604(f)). *Id.* at 7-8. Plaintiffs sought
 5 declaratory, injunctive, and damages relief, including reinstatement of her housing
 6 assistance. *Id.* Defendants subsequently filed their answer. Doc. 18. With leave of
 7 court, Plaintiffs amended their amended complaint to substitute the “Maricopa County
 8 Board of Supervisors” for the “Maricopa County Board of Commissioners.” Doc. 34.

9 On July 11, 2016, Plaintiffs filed a motion to amend their second amended
 10 complaint. The proposed amendment seeks to add four defendants: Jenese Bojorquez,
 11 Marifel Saldana, Keith Quinn, and the unknown hearing officer (collectively, the
 12 “HAMC Employees”). Doc. 40 at 1. The HAMC Employees are each named in both
 13 their individual and official capacities. *Id.* The proposed amendment has little overlap
 14 with the second amended complaint. It includes several pages of new exhibits, cites new
 15 legal authority, and alleges violations of several regulations not discussed in the prior
 16 complaint. *Compare* Doc. 35 with Doc. 40. The demand for relief, however, is largely
 17 unchanged: the proposed third amended complaint seeks a declaratory judgment stating
 18 that Defendants’ conduct violated the Due Process Clause, preliminary and permanent
 19 injunctive relief reinstating Plaintiff Lachcik’s subsidy, and compensatory damages.
 20 Docs. 35 at 7-8; 40 at 14.

21 **II. Legal Standard.**

22 Because the deadline for amending as a matter of course has passed, Plaintiffs may
 23 amend “only with the opposing party’s written consent or the court’s leave.” Fed. R. Civ.
 24 P. 15(a)(2). Leave to amend is given freely “when justice so requires.” *Id.* “Rule 15’s
 25 policy of favoring amendments to pleadings should be applied with extreme liberality.”
26 DCD Programs, Ltd. v. Leighton, 833 F.2d 183, 186 (9th Cir. 1987) (internal quotation
 27 marks and citations omitted; alterations incorporated). A motion for leave to amend may
 28 be denied, however, if the court finds “undue delay, bad faith or dilatory motive on the

1 part of the movant, repeated failure to cure deficiencies by amendments previously
 2 allowed, undue prejudice to the opposing party by virtue of allowance of the amendment,
 3 [or] futility of amendment.” *Foman v. Davis*, 371 U.S. 178, 182 (1962).

4 Pursuant to this Court’s Local Rules of Civil Procedure, “[a] party who moves for
 5 leave to amend a pleading must attach a copy of the proposed amended pleading as an
 6 exhibit to the motion, which must indicate in what respect it differs from the pleading
 7 which it amends, by bracketing or striking through the text to be deleted and underlining
 8 the text to be added.” LRCiv 15.1(a). This rule carries ““the force of law.”” *Eldridge v.*
 9 *Schroeder*, No. CV-14-01325-PHX-DGC-ESW, 2016 WL 354868, at *2 (D. Ariz. Jan.
 10 28, 2016) (quoting *Hollingsworth v. Perry*, 558 U.S. 183, 191 (2010)). Courts in this
 11 district “routinely den[y] motions for leave to amend for failure to comply with LRCiv
 12 15.1(a),” *id.* (collecting cases), and it is well within their discretion to do so. *See, e.g.,*
 13 *Young v. Nooth*, 539 F. App’x 710, 711 (9th Cir. 2013) (“The district court did not abuse
 14 its discretion in denying Young leave to amend his complaint because Young failed to
 15 attach a proposed amended complaint as required by local rule.”).

16 **III. Analysis.**

17 Defendants contend that Plaintiffs’ motion should be denied because (1) Plaintiffs
 18 failed to comply with LRCiv 15.1(a), (2) Plaintiffs have unduly delayed this motion,
 19 (3) the proposed amendment would be prejudicial to Defendants, and (4) the proposed
 20 amendments would be futile. Doc. 43.

21 **A. LRCiv 15.1(a).**

22 As Defendants pointed out in their opposition, Plaintiffs’ motion for leave to
 23 amend did not comply with LRCiv 15.1(a). Within one week of being apprised of this
 24 defect, Plaintiffs filed a version of the second amended complaint that satisfied LRCiv
 25 15.1(a). Docs. 46, 48. Because Plaintiffs acted quickly in responding to the procedural
 26 defect in their original motion, and because it does not appear that Defendants were
 27 prejudiced by Plaintiffs’ initial noncompliance with LRCiv 15.1(a), the Court will not
 28 dismiss Plaintiffs’ motion based on this initial noncompliance. The Court reminds

1 Plaintiffs, however, that compliance with the Local Rules of Civil Procedure is
2 mandatory, even for pro se litigants, and that failure to comply with these rules in the
3 future may result in denial of motions of dismissal of their case.

4 **B. Undue Delay.**

5 Defendants argue that Plaintiffs have unduly delayed this amendment.
6 Specifically, Defendants object that Plaintiffs waited nine months to name the HAMC
7 Employees as defendants, even though Plaintiffs knew about the HAMC Employees'
8 relevant actions at the time they initiated this action. Doc. 43 at 5.

9 Plaintiffs explain that they did not initially name the HAMC Employees because
10 they did not believe it was necessary in order to obtain their desired relief. Doc. 44 at 1.
11 Plaintiffs decided to add these defendants after the May 10, 2016 status conference,
12 where Defendants indicated their intent to move for dismissal of the case on the ground
13 that the defendants named in the second amended complaint lacked capacity to be sued.

14 *Id.*

15 In light of this explanation, the Court cannot conclude that Plaintiffs unreasonably
16 delayed in seeking to add the HAMC Employees as defendants. Plaintiffs sought to add
17 these individuals within two months of learning that Defendants intended to dispute the
18 capacity of the named defendants. That was new, relevant information.

19 **C. Prejudice.**

20 Defendants argue that they would be prejudiced if Plaintiffs were allowed to file
21 their third amended complaint. Specifically, they argue that such an amendment would
22 likely necessitate additional discovery and would require Defendants to incur additional
23 expenses filing a new answer. Doc. 43 at 6-7. Defendants do not identify any specific
24 discovery that would be necessitated by the proposed amendment; indeed, they argue
25 elsewhere in their opposition that the third amended complaint "contains essentially the
26 exact same claims as their previous three Complaints did." Doc. 43 at 7. Nor do
27 Defendants cite any case holding that the expense of filing a second answer is grounds
28 for denying a motion to amend. Such a ruling would be hard to square with the Ninth

1 Circuit's instruction that courts should apply Rule 15's policy of favoring amendments to
2 pleadings "with extreme liberality." *DCD Programs*, 833 F.2d at 186.

3 **D. Futility.**

4 Defendants argue that the proposed amendment should be denied as futile because
5 it does not contain any new, viable claims. Doc. 43 at 6-7. The Court will not deny the
6 motion on this basis. The proposed amendment contains new exhibits, cites new legal
7 authority, and alleges violations of several regulations not discussed in the prior
8 complaint. Most importantly, it names new defendants in an attempt to preempt
9 Defendants' argument that the existing defendants lack capacity to be sued. Defendants
10 do not explain why these additions are futile.

11 **IT IS ORDERED** that Plaintiffs' motion of leave to amend (Doc. 39) is **granted**.
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13 Dated this 15th day of August, 2016.
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18 David G. Campbell
19 United States District Judge
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